82-623

NO.

Office-Supreme Court, U.S.
FILED
FEB 14 1983
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

B

OCTOBER TERM, 1982

HURIE JONES, JOYCELYN M. JONES, MECHELLE D. JONES, COMECO C. JONES AND KIM B. JONES

APPELLANTS,

VS.

JOHN MITCHELL, HOWARD WRIGHT, DONALD DILLON, MELVIN STOKES AND ALWYNN CRONVICH

APPELLEES.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

HURIE JONES
JOYCELYN M. JONES
2103 LA QUINTA VIA
HARVEY, LOUISIANA 70058
COUNSEL FOR APPELLANTS
IN PROPER PERSON

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

QUESTIONS PRESENTED

I.

Whether or not alleged voluntary signatures procured by appellees, sheriff's deputies John Mitchell and Howard Wright, from appellants Joycelyn M. Jones and Mechelle D. Jones, while being subjected to false arrest and imprisonment without a warrant, detention, interrogation, threats of deprivation of freedom or liberty and loss of employment as a teacher in Jefferson Parish, at police headquarters, is admissible as evidence of probable cause to arrest without a warrant and charge appellant Hurie Jones with committing a felony for allegedly violating R. S. 14 section 93 of the Louisiana Criminal Code; where appellees constantly refused, prior to arrest, detention and interrogation to inform appellants Joycelyn M. Jones and Mechelle D. Jones, in any manner whatsoever, that they had a constitutional right to remain silent and refuse to sign statements, composed and written entirely by appellees Mitchell and Wright. Finally, where appellees constantly refused to grant appellants Joycelyn and Mechelle Jones continuous and unequivocal request that they be permitted to call by telephone other members of their immediate family to be present at police headquarters and further to request that their attorney be present for immediate legal advice.

II.

Whether or not appellee, John Mitchell and Howard Wright's actions of arrest, detention and imprisonment of appellant Hurie Jones upon manufactured felony charges on April 6, 1977 was an arbitrary and capricious act, without probable cause, constituting a malicious act of

false arrest and false imprisonment motivated by class base animus, as a continuing joint conspiratorial retaliation against appellants because of their hundreds of complaints documented in the Jefferson Parish Sheriff's Office of fear evoking threats, emotional stress, intimidations, burglaries, assaults, batteries and coercion for eight and one half years (8½) to the Jefferson Parish Juvenile Department and Internal Affairs Division, about appellees complicity and acquiescence with knowledge of identified third party juvenile perpetrators in criminal acts against appellants at their home. Further, where appellees had absolutely no personal knowledge or third party complaints of any kind of criminal conduct on the part of appellant Hurie Jones; that such manufactured felony charges had to be dismissed by the court without initiating prosecution. Finally, where appellees had actual knowledge that appellant Hurie Jones had recently graduated from Law School on May 21, 1976 and had specifically assigned Deputy Sheriff Robert L. Banks to conduct daily physical and electronic surveillance of appellants which substantially threaten, harassed, intimidated and coerced appellants at their home from May 22, 1976 through May 17, 1977; that forced appellants to experience great fear, anxiety, continuous emotional stress and to move out of Jefferson Parish.

III.

Whether or not the trial and appellate courts committed reversible prejudicial error by granting to appellees herein a motion for a protective order on June 5, 1980, *pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,* which also directed Mr. Andrew H. George, acting Sheriff of Jefferson Parish, Jefferson Parish District Attorney, John Mamoulides, and Attorney Richard Lee, who were all

non-parties or third parties to the trial court action, caused to be served by appellants with a Subpoena Ducas Tecum under the seal of the Federal District Court for the Eastern District of Louisiana, not to produce the requested documents nor to appear in court on June 30, 1980 for the trial of this case; where the subpoenas specifically or properly identified requested documentary evidence under the exclusive possession and control of the parties subpoenaed.

Finally, where *appellants' motion to compel appellees to permit discovery,* pursuant to Federal Rules of Civil Procedure 26, 30, 33, 34, 36, 37 and 45 *were all immediately summarily denied by the trial and appellate courts, but granted all discovery requested by appellees.*

IV.

Whether or not the trial and appellate courts committed reversible prejudicial error by granting summary judgment to appellees Alwynn Cronvich, Melvin Stokes and Donald Dillon which dismissed appellants' lawsuit as to them. First, when there was at all times substantial issues of material facts actually controverted in good faith as evidenced by pleadings and evidence sought to be discovered by appellants. Second, where counsel for appellees failed and refused to mail appellants a flat, legible and bound copy of appellees' motion for summary judgment as mandated by Rule 56 of the Federal Rules of Civil Procedure and Local Rules 3.3 and 3.5 of the Federal Rules of Civil Procedure.

Third, where counsel for appellees, engaged in trickery, artifice and fabrications and never informed appellants of date and hour of the hearing on their motion for

summary judgment; *by attaching therewith a certificate of service and notice of the date of hearing,* as mandated by the Local and Federal Rules of Civil Procedure cited above.

Fourth, where the granting of appellees' motion for summary judgment substantially fragmented appellants' lawsuit and proof or evidence which tended to prove or establish appellee' conspiracy.

TABLE OF CONTENTS

PAGES

QUESTIONS PRESENTED ..... i-iv
TABLE OF CONTENTS v
TABLE OF AUTHORITIES ..... vi-vii
OPINIONS BELOW 1-2
JURISDICTION OF THE COURT 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2-12
STATEMENT OF THE CASE 12-15
SUBSTANTIALITY OF THE FEDERAL QUESTION 15

TABLE OF CONTENTS (APPENDICES)

PAGES

APPENDIX A—OPINIONS AND ORDERS OF THE FIFTH CIRCUIT COURT OF APPEALS ..... A-1—A-7
APPENDIX B—OPINIONS AND ORDERS OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA ..... A-8—A-22
APPENDIX C—JUDGMENT APPEALED FROM AND ORDER ON REHEARING ..... A-23—A-24
APPENDIX D—NOTICE OF APPEALS TO THE SUPREME COURT OF THE UNITED STATES ..... A-25—A-29

TABLE OF AUTHORITIES

CASES: **PAGES**

Azar V. Conley,
156 F. 2d 1382(1972) 12

Byran V. Jones,
530 F. 2d 1210 (5th Cir. 1976) 11

Donaldson V. United States,
400 U.S. 517 (1971) 13

Dowsey V. Wilkins,
467 F. 2d 1022 (5th Cir. 1972) 8

Griffin V. Breckenridge,
403 U.S. 88, 96-102, 91 S.Ct. 1790, 29 L.Ed.2d
1210 (5th Cir. 1976) 8, 12

Hickman V. Taylor,
329 U.S. 495-500-501-507-508, (1947) 13

McCollan V. Tate,
575 F. 2d 509 (5th Cir. 1978) 8

Michigan V. Tucker,
417 U.S. 433,443 8

Miranda V. Arizona,
384 U.S. 436, 86 S.Ct. 1602 (1966) 8, 9

Monroe V. Pape,
365 U.S. 167, 81 S.Ct. 473 ..... 8, 11

Pullam-Standard V. Swint,
102 S.Ct. 1781, 1791, 72 L.Ed.2d 66(1982) 12

Reporters Committee V. American Telephone and
Telegraph, 593 F. 2d 1030 (1979) 13

Sims V. Adams,
537 F. 2d 829 (5th Cir. 1972) 8

Slavin V. Curry,
574 F. 2d 1256 (5th Cir. 1978) 8, 11

Steven V. Gaskin,
531 F. 2d 765 (5th Cir. 1976) 8

United States V. Miller,
425 U.S. 435, 96 S.Ct. 1619, (1976) 13

United States V. Nixon, President of the United States,
418 U.S. 683 (1974) 13

Pages

Constitutional and Statutory Authorities

28 U.S.C.A. Sections 1331 and 1343(3) and (4) 2, 9, 10
42 U.S.C.A. Section 1981 2
42 U.S.C.A. Section 1983 ..... 2, 10, 11
42 U.S.C.A. Section 1985 ..... 2, 11

Constitution of the State of Louisiana
Article I Sections 1, 2, 3, 5, 7, 13, 14, 16, 19, 20, and 22 ... 2, 7

Constitution of the United States Amendments

1st Amendment 2, 15
4th Amendment 2, 15
5th Amendment 2, 15
6th Amendment 2, 15
8th Amendment 2
14th Amendment 2, 9, 10, 15

Louisiana Civil Code Articles
2315, 2315.1, 2317, 2321, 2324, 2330 2

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1982

HURIE JONES, JOYCELYN M. JONES, MECHELLE D. JONES, COMECO C. JONES AND KIM B. JONES

APPELLANTS,

VS.

JOHN MITCHELL, HOWARD WRIGHT, DONALD DILLON, MELVIN STOKES AND ALWYNN CRONVICH

APPELLEES.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

OPINIONS BELOW

None of the lower court opinions and orders have been published. The Fifth Circuit Court of Appeals' Opinion was filed September 10, 1982, and its order filed October 18, 1982 denying appellants' petition for rehearing and suggestion for rehearing en banc are reprinted in the appendix herein.

The Federal District Court's decision dismissing appellants' complaint was filed on August 8, 1980 is reprinted in the appendix herein.

JURISDICTION OF THE COURT

The United States Court of Appeals for the Fifth Circuit filed its opinion on September 10, 1982. Appellants' petition for Rehearing and Suggestion for Rehearing En Banc was filed on October 1, 1982 and denied by "order," filed October 18, 1982. Notice of appeal was filed in the Fifth Circuit Court of Appeals on November 1, 1982.

The time within to docket this appeal expires on February 15, 1983. Timely docketing of this appeal has been made. The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C.A. Sections 1331 and 1343(3) and (4).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appellants filed this lawsuit against appellees pursuant to the Constitution of the United States; specifically the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments and applicable statutory counterparts cited as 42 U.S.C.A. Sections 1981, 1983, and 1985. Further, pendent jurisdiction of this court is sought pursuant to Louisiana Civil Code Articles 2315, 2315.5, 2317, 2321, 2324, 2330 and pursuant to the Constitution of the State of Louisiana; specifically Article I Sections 1, 2, 3, 5, 7, 13, 14, 16, 19, 20 and 22.

Plaintiffs-Appellants, who are black citizens, are alleging in this controversy that defendants-appellees con-

spired jointly with and in support of third party Attorneys Thomas J. Divens and Lionel Collins to substantially violate appellants' civil rights under color and pretense of state laws which effectively deprived appellants of equal protection of laws, due process of laws and deprivation of freedom or liberty by being subjected to systematic harassment, fear, intimidation, prolonged illegal detention, false arrest without a warrant, interrogation, threatened with and subsequent actual loss of employment as teachers in Jefferson Parish, unlawfully charged with a felony and actually subjected to false imprisonment by appellees on April 5 and 6, 1977.

Appellees, John Mitchell and Howard Wright who, first acted in furtherance of a joint covert conspiracy, with Attorneys Thomas J. Divens and Lionel Collins, on or about May 21, 1976 specifically calculated and designed to thwart or prevent appellant Hurie Jones, a graduate of Southern University School of Law on May 21, 1976, from becoming licensed to practice law and continue being a domiciliary in Jefferson Parish, in competition with the above named attorneys for the opportunities to provide legal services to the citizens of Jefferson Parish. Thus, the above named attorneys had already consummated a conspiracy thwarting and destroying the prospective legal career of Mr. Warren prout in 1974, the previous Southern University Law School graduate, by having him arrested, charged with committing a felony, convicted and sentenced to prison upon alleged manufactured felony charges, because Mr. Prout sought to become licensed to practice law and continued being a domiciliary of Jefferson Parish. Furthermore, *not one black Southern University Law School graduate has been permitted to maintain a domicile in Jefferson Parish and practice law therein*, the second most populous parish in Louisiana (500,000 people), *to this*

present date; notwithstanding the fact that Southern University School of Law has graduated more than ninety percent (90%) of all black lawyers practicing in Louisiana for more than twenty (20) years.

Second, appellees John Mitchell and Howard Wright acted in furtherance of an existing but continuing joint covert conspiracy with Attorneys Thomas J. Divens and Lionel Collins in retaliation against appellants in general for making hundreds of documented complaints for eight and one half (8½) years, to the Jefferson Parish Juvenile Division and to the parish police internal affairs division of appellees complicity in acts of harassment, intimidating fear, evoking threats of violence, assaults, batteries, burglaries and coercion committed by five of the ten Baskin juveniles; who were promptly sentenced to the parish prison and state penitentiary when they committed similar crimes against white citizens outside of appellants all black community, while living next door to appellants.

Appellees, deputies Melvin Stokes, Donald Dillon and Sheriff Alwynn L. Cronvich, as law enforcement authorities, procured, acted in complicity with the Baskin juveniles and in acquiescence of by omission of their duty toward appellants while in actual or factual knowledge that the criminal acts alleged above were continuously being committed against appellants for eight and one half (8½) years, ending on May 17, 1977, when appellants were evicted or forced to sell their home for what they could get and moved to a small apartment, in the same parish, located at 600 Deerfield Road, Gretna, Louisiana 70053, whereby appellant could escape experiencing constant fear, depression, sleepless nights, anxiety and emotional stress, forming a continuing emergency on a daily basis, that *prevented appellants from going about their planned*

daily affairs.

Appellants ultimately resolved, despite the social stigma, to obtain psychological counseling on the evening of April 5, 1977 at the West Jefferson Hospital, calculated to especially calm the fears, anxieties and emotional stress of the four female appellants which continued until May 1980, with Dr. Fred Davis, clinical psychologist (See pretrial order) and not for the reasons subsequently manufactured by appellees in alleged voluntary statements and their motion for Summary Judgment in this case.

Appellees' actions constituted a desperate attempt to manufacture grounds for probable cause for arresting and imprisoning appellants based entirely upon inadmissible coerced hearsay evidence, in violation of Rule 801 of the Federal Rules of Evidence and appellees blatant lack of any personal knowledge and witnesses testimonial corroboration of any evidence of the commission of any crime(s) as required by Rule 602 of the Federal Rules of Evidence. (See pages 17, 18, 19, 20 and 21 of Appellants' original brief directed to the Fifth Circuit Court of Appeals).

Further, on April 5 and 6, 1977 deputy Mitchell's directed threats to appellants, that "appellant Hurie Jones had better move out of Jefferson Parish and stop his pursuit of a career as a licensed practicing lawyer; that appellants Joycelyn and Hurie Jones should be satisfied with their teaching jobs, as there were enough black attorneys in Jefferson Parish with Thomas J. Divens and Lionel Collins; that all those law school graduates from Southern University would, if not stopped, overproliferate Jefferson Parish the same way they have done in Orleans Parish."

Thus, deputies John Mitchell and Howard Wright, having extracted by intimidation and coercion the signatures of appellants Joycelyn M. Jones and Mechelle D. Jones on April 5, 1977 through threatening appellant Joycelyn M. Jones with imprisonment, loss of custody of her children, loss of her teaching position with the Jefferson Parish School System and continued exposure to harassment, hatred and ridicule in their community.

Thereafter, on April 5, 1977 deputies John Mitchell and Howard Wright, having succeeding in separating appellants named herein, when they were transported by appellees Mitchell and Wright to police headquarters for detention and interrogation. Thereafter, appellees refused and temporarily prevented the Jones' family from being reunited at the hospital and at their home, after detention and interrogation because appellees Mitchell and Wright transported appellants Joycelyn and Mechelle Jones to Mrs. Jones mother's home whereupon she was told by deputy Mitchell not to leave; further stating, to Mrs. Jones, that she was not to return to live with her family at 100 Deacon Street, Avondale, Louisiana nor would she contact appellant Hurie Jones.

Furthermore, appellees John Mitchell and Howard Wright, having conspired to hide or conceal appellant Joycelyn and Mechelle Jones through threats, intimidation and coercion to be future involuntary witnesses for the state against another family member, specifically appellant Hurie Jones; thereafter deputies Mitchell and Wright proceeded to consummate their ultimate goal of arresting appellant Hurie Jones, on April 6, 1977, upon felony charges, for allegedly violating R.S. 14:93 of the Louisiana Criminal Code.

Thus, after deputy John Mitchell arrested appellant Hurie Jones, directed him to a jail cell whereupon deputy Mitchell stated to appellant Hurie Jones that "I hate you very much and have waited for several years to put you in this jail cell;" repeating his name about five consecutive times that "my name is John Mitchell so always remember that I put you behind these bars," whereupon deputy John Mitchell slammed the jail cell door very hard in appellant Hurie Jones' face and walked away. (See pages 27, 28, 29 and 30 of Appellants' original brief directed to the Fifth Circuit Court of Appeals)

Ultimately, the false arrest, detention, interrogation, intimidation and coercion of appellants Joycelyn M. Jones and Mechelle D. Jones on April 5, 1977, followed by the false arrest, without a warrant, of appellant Hurie Jones on April 6, 1977, upon felony charges never resulted in the initiation of any prosecution but was dismissed in 1979 but not before such illegal actions caused appellants to be subjected to massive hatred, ridicule and further harassment in direct violation of the Louisiana Constitution; specifically Article I. Declaration of Rights: Section 2. Due Process of Laws, Section 3. Right to Individual Dignity, Section 5. Right to Privacy, Section 7. Freedom of Expression, Section 13. Rights of the Accused, Section 14. Right to Preliminary Examination, Section 16. Right to a Fair Trial, Section 19. Right to Judicial Review, Section 20. Right to Humane Treatment and Section 22. Access to Courts.

It is appellants irrevocable contention that based upon comprehensive analysis or study of all circumstances of this controversy that the judgments of the lower courts were contrary to the following landmark decisions of the United States Court of Appeals for the Fifth Circuit and the Supreme Court of the United States; that careful

deliberate consideration by this court is necessary to secure and maintain uniformity of decisions in this court. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966), *Monroe V. Pape*, 365 U.S. 167, 81 S.Ct. 473, *Griffin V. Breckenridge*, 403 U.S. 88, 96-102, 91 S.Ct. 1790, *Bryan V. Jones*, 530 F.2d 1210 (5th Cir. 1976), *Slavin V. Curry*, 574 F.2d 1256 (5th Cir. 1978), *McCollan V. Tate*, 575 F.2d 509 (5th Cir. 1978), *Sims V. Adams*, 537 F.2d 829 (5th Cir. 1972), *Dowsey V. Wilkins*, 467 F.2d 1022 (5th Cir. 1972), *Steven V. Gaskin*, 531 F.2d 765 (5th Cir. 1976).

> "In *Miranda V. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966), the court promulgates a set of safeguards to protect the constitutional rights of persons subjected to custodial police arrest, detention and interrogation.
>
> In summation, the court held in the Miranda Case that unless law enforcement officers specifically give specified warnings (evidenced by a contemporaneously signed notifications-of rights form) before questioning a person in actual custody, and follow specified procedures during the course of any subsequent interrogation, any statement made by person(s) in custody cannot, over his or her objections, be admitted in evidence against him or her as a defendant at trial. Also see *Michigan V. Tucker*, 417 U.S. 433, 443."
>
> "Once warnings have been given, *which was never done in this case*, the subsequent procedure is clear. If the individual(s) indicates in any manner, at any time prior to or during questioning that he wishes to remain silent, *which was clearly stated in this case*, the interrogation must cease. At this point he or she has shown that he or she irrevocably intend to exercise his or her Fifth

Amendment privilege of remaining silent or not to sign any kind of document(s)."

Thereafter, any statement taken, in any manner after the person invokes his privilege cannot be other than the product of involuntary compulsion, subtle or otherwise. Without the right to cut off questioning or interrogating a suspect or arrestee, the setting of in custody interrogation operates on the individual(s) to overcome free choice in producing a statement after the Fifth Amendment privilege to remain silent has been clearly invoked. See *Miranda V. Arizona*, 384 U.S. at 473-474. Thus, the above cited authority states that the "interrogation must cease when the person in custody indicates that "he wished to remain silent.

Furthermore, the guidelines enunciated by Miranda must, of course, necessarily be sensitive to the reality that "as a practical matter, the compulsion to speak to one's detriment in the isolated setting of the police station may well be greater than in the courts or other official investigations, where there are often impartial observers to guard against intimidation, coercion or trickery." 384 U.S. at 461.

(For a comprehensive view of appellants claims see their briefs and petition for rehearing en banc directed to the United States Court of Appeals for the Fifth Circuit)

Thus, where the constitutional rights sought to be protected are guaranteed by the Fourteenth (14) Amendment Rights to equal protection and due process of laws, their deprivation is sufficient to confer jurisdiction of this court pursuant to 28 U.S.C. Section 1331. The above enunciated set of circumstances would also confer the jurisdic-

tion of this court pursuant to 28 U.S.C. Section 1343(3) (4).

28 U.S.C. Section 1343(3) provides for invoking the original jurisdiction of this court for the deprivation of plaintiffs-appellants under color and pretense of state law(s) of any rights, privileges and immunities secured to them by the United States Constitution or acts of Congress guaranteeing all citizens equal rights while 28 U.S.C. Section 1343(4) provides for invoking the original jurisdiction of this court to recover damages or to secure equitable or other relief pursuant to any act of Congress providing for the protection of Civil Rights. The above enunciated set of circumstances would be sufficient to confer the jurisdiction of this court pursuant to 42 U.S.C. Section 1983; as promulgated by Congress for the protection of civil rights.

The Congress of the United States has made its power available to this court to enforce the provisions for the Fourteenth (14) Amendment to the United States Constitution against those who carry a badge of authority of a state and represent it in some capaciaty, whether they act in accordance with their authority or not. Thus, appellants allegations of facts constituting a deprivation under color of state authority of rights guaranteed by the Fourteenth (14) Amendment satisfies to that extent the requirements of 42 U.S.C. Section 1983; giving a right of action against a person who under color of state law, custom or usage, subjects another to the deprivation of any rights, privileges or immunities secured by the Federal Constitution.

It is no answer that the state has a law which if enforced would give appellants their requested relief, the federal remedy is supplementary to the state remedy and the state remedy need not be first sought and refused before the federal remedy is invoked. Therefore, the pur-

pose of 42 U.S.C. Section 1983 giving a right of action against a person who, under color of state law, custom or usage, subjects another to the deprivation of any rights, privileges or immunities secured by the Federal Constitution, has several purposes: (1) it overrides certain kinds of state law; (2) it provides a remedy where state law is inadequate; and (3) it provides a federal remedy though the state remedy, adequate in theory, is not available in practice.

Finally, misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is an action taken "*under color of state law,*" within the meaning 42 U.S.C. Section 1983; *which does not require specific intent to deprive a person of a federal right to create liability.* See *Monore V. Pape,* 365 U.S. 167, 5 L.Ed.2d 492, 81 S.Ct. 473; *Slavin V. Curry,* 574 F.2d 1256 (5th Cir. 1978) and *Byran V. Jones,* 530 F.2d 1210 (5th Cir. 1976).

42 U.S.C. Sections 1983 and 1985(3) provides that, where plaintiffs-appellants have alleged a continuing joint conspiracy, that implicate third party private individuals, with complicity in violating their civil rights, liability arises from membership in the conspiracy and from traditional notions that a conspirator is vicariously liable for the acts of his con-conspirators, and liability does not arise solely because of an individual's own conduct. Therefore, it is not sufficient justification to say that claims against a particular defendant-appellee must be dismissed because defendant would be immune from liability for his own conduct. Furthermore, private individuals may be held liable pursuant to 42 U.S.C. Sections 1983 and 1985(3) if they conspired with persons who acted under color of state law; whether such conduct constituted acts of omission or commission which injured plaintiffs-appellant in person or

property as a result of "an invidious class based animus." *Griffin V. Breckenridge,* 403 U.S. 88 (1972); *Azar V. Conley,* 156 F.2d 1382 (1972).

STATEMENT OF THE CASE

Appellants, suggest to this court that discovery or fact finding is the fundamental or basic judicial responsibility of the Federal district court rather than the appellate courts. Thus, appellant further suggest to this honorable court that appellants should not have been placed in the untenable position of looking to the appellate courts to resolve any factual dispute that has not been considered by the District Court. *Pullam-Standard V. Swint,* 102 S.Ct. 1781, 1791 and 72 L.Ed.2d 66 (1982).

Therefore, *the granting of appellees' motion for a protective order by the District court,* pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, which directed acting Jefferson Parish Sheriff Andrew H. George, Jefferson Parish District Attorney John Mamoulides and South Central Bell Telephone Company's Attorney Richard E. Lee *not to produce specifically identified documentary and testimonial evidence, requested for use at the trial of this case on June 30, 1980 by appellants,* pursuant to their Subpoena Ducas Tecum and subsequent motion to compel discovery, as authorized by Rule 37 and 45 of the Federal Rules of Civil Procedure constituted substantial prejudicial error.

First, appellees' counsel cannot, pursuant to Federal Rules of Civil Procedure, be granted a protective order which is designed and calculated to prevent or thwart appellans discovery request constituting obstruction of justice. Second, appellees should never be granted a pro-

tective order, under the Federal Rules of Civil Procedure, which directed the non-parties or third parties named above from producing documentary and testimonial evidence. See *United States V. Nixon, President of the United States,* 418 U.S. 683(1974), *Reporters Committee V. American Telephone and Telegraph,* 593 F.2d 1030 (1979), *Donaldson V. United States,* 400 U.S. 517 (1971), *United States V. Miller,* 425 U.S. 435, 96 S.Ct. 1619 (1976), and *Hickman V. Taylor,* 329 U.S. 495-500-501-507-508, (1947).

Thus, the trial and appellate courts committed substantial further irreparable and decisive prejudicial error by summarily denying appellants' motion for a short continuance of the trial of this case, filed on June 13, 1980; notwithstanding the fact that appellants had clearly informed the court in their motion for a continuance that their primary witness, Ms Margaret Keller, who was appellant Mechelle D. Jones' teacher had been subpoenaed but had not received notice because that witness had moved to another nearby residence.

Further, appellants were denied a continuance for the further purpose of obtaining copies of the transcripts of appellee Sheriff Alwynn J. Cronvich's grand jury indictment, on April 12, 1979, upon felony charges for violating appellants and hundreds of other Jefferson Parish citizens' civil rights as evidenced by appellees conducting illegal physical and electronic surveillance of appellants at their home by appellees' official assignment of deputy Robert L. Banks from May 22, 1976 through May 17, 1977 to routinely perform such harassing and intimidating surveillances.

Ultimately, *appellee Sheriff Alwynn Cronvich plea bargain arrangements resulted in appellee Sheriff Cronvich entering a voluntary guilty plea to misdemeanor charges so*

as to avoid being convicted upon felony charges and thereafter losing his license to practice law in Louisiana; as a result of felony charges initiated by the United States Attorney's office at New Orleans, Louisiana.

The action of the trial court of granting appellees Stokes, Dillon and Cronvich's motion for Summary Judgment, under the circumstances delineated by appellants herein, constituted a gross violation of Rule 56 of the Federal Rules of Civil Procedure and had the practical effect of fragmenting appellants initial claims of a continuing joint conspiracy, beginning for purposes of this complaint on or about April 1, 1976, from the most substantial recent overt act or component of the continuing joint conspiracy; which involved the illegal action of John Mitchell and Howard Wright, on April 5 and 6, 1977, falsely arresting, detaining and interrogating appellants Joycelyn, Mechelle and Hurie Jones while ignoring all their constitutional rights and immunities to be free from forced self incrimination of themselves and others.

Thus, appellants were present in the trial court on March 12, 1980, only to conduct oral arguments on the merits of their motion to suppress inadmissible, unidentified, allegedly voluntarily signed statements, photographs and an illegally produced deposition for use as evidence by appellees whereupon, without any prior notice of hearing, as mandated by Rule 56 of the Federal Rules of Civil Procedure, *appellants were told for the first time that the court would first hear oral arguments on appellees' motion for summary Judgment; which was mailed very late to appellants without any notice of hearing date given as delineated in issue No. IV.* Therefore, due to the trickery and artifice of opposing counsel Kenneth V. Ward, Jr. appellants could not, under these circumstances, defend

or oppose appellees' motion for summary judgment; notwithstanding that there were existing substantial issues of material facts controverted in good faith.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents well settled but fundamental and substantial questions of whether, upon careful evaluation of the totality of the circumstances presented in this case, appellants are guaranteed by the United States Constitution the right to be left alone to pursue daily their lawful chosen careers; free from constant harassment, threats, intimidation, coercion, false arrest upon felony charges, detention, interrogation, false imprisonment and exposure to hatred and ridicule in appellants' community as a result of such *malicious persecution* by appellees with and in support of third party attorneys named herein, *without any possibility of obtaining any good faith prosecution and conviction upon such manufactured charges.*

Thus, appellees have substantially violated appellants' civil rights, privileges and immunities as guaranteed by the Federal Constitution; specifically the First (1st), Fourth (4th), Fifth (5th), Sixth (6th) and Fourteenth (14th) Amendments thereto.

Finally, appellants have adequately alleged appellees substantial participation in a joint continuing covert conspiracy with third parties named herein; therefore the Federal District Court and Fifth Circuit Court of Appeals committed substantial prejudicial error by dismissing appellants' lawsuit without actually reading their pleadings; but *merely recopied verbatim the appellees' manufactured accusations made in their motion for summary judgment as their opinions or decisions in this case.*

Respectfully submitted in
proper person by:

_____

Hurie Jones

_____

Joycelyn M. Jones
2103 La Quinta Via
Harvey, Louisiana 70058
(504) 367-9621

Attorney for Appellees
Jefferson Parish Sheriff's
Deputies
Kenneth V. Ward, Jr.
3714 Airline Highway
Post Office Box 805
Metairie, Louisiana 70001
(504) 834-8866

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 80-3734
Summary Calendar

HURIE JONES, et al.,

Plaintiffs-Appellants,

versus

JOHN MITCHELL, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana

(September 10, 1982)

Before CLARK, Chief Judge, POLITZ AND HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

Appellant Hurie Jones brought this action under 42 U.S.C. § 1985 and 28 U.S.C. § 1343, alleging a racially motivated conspiracy to deprive him and his family of their constitutional rights. Jones alleged that his neighbors, members of the Jefferson Parish Sheriff's Department, employees of the Jefferson Parish School System, and two

black attorneys practicing in the community conspired to prevent Jones from becoming a licensed attorney, to force his family to move from Jefferson Parish, and to terminate Mrs. Jones from her teaching position in the Jefferson Parish schools. The district court granted partial summary judgment for the defendants with respect to all events occuring before April 5, 1977, holding that they were time-barred. The remainder of the case was tried before the court and judgment was rendered for the defendants. On appeal, Jones couches his complaints of error in forty-four issues which, for purposes of this opinion, we consolidate into eleven. We reject all of Jones's allegations and affirm the district court's judgment.

Under the first prong of the alleged conspiracy, Jones alleges that his neighbor's family continuously harassed the Jones family by acts of vandalism, physical brutality, and theft between May 21, 1970, and March 17, 1977. According to Jones, the local authorities, praticularly defendants Melvin Stokes and Donal Dillon, not only refused to stop the harassment, but actually encouraged it. The district court's grant of partial summary judgment as to all events occurring before April 5, 1977, had the effect of eliminating all the allegations concerning the first prong of the conspiracy.

The claims involving the second prong of the conspiracy were fully tried to the court. The second prong revolved around an allegedly false arrest of Jones by defendant detectives John Mitchell and Howard Wright. On April 5, 1977, Mr. and Mrs. Jones brought their ten year old daughter to West Jefferson General Hospital. The child had a bloody nose, a missing tooth, multiple welts and bruises on her head, back, arms, chest, abdomen, legs, and ankles, and complained of pain in her abdomen and the

back of her neck. Mr. Jones told the admitting nurse that his daughter has fallen out of bed. Mrs. Jones required treatment for a laceration over her left eyebrow. The treating doctor reported the incident to appellee, Detective John Mitchell. Detective Mitchell brought Mrs. Jones and her daughter from the hospital to the police station for questioning. Both the mother and daughter told Detective Mitchell that their wounds were inflicted by Mr. Jones. Jones was arrested the following day at his residence without a warrant by Detective Mitchell and Detective Howard Wright for the crime of cruelty to a juvenile.

Jones asserts that the district court improperly granted partial summary judgment in favor of defendants. Prior to trial, defendants moved for a summary judgment with respect to the alleged conspiracy involving the neighbor's children. In support of their motion, defendants Stokes and Dillon presented affidavits stating that they fully investigated Jones' complaints, that they performed their official duties without malice and according to proper police procedures, and that they did not instruct other police officers to ignore Jones' complaints. Unless countered, these affidavits eliminated all genuine issues as to any material fact concerning the alleged conspiracy involving the neighbor's children. Jones failed to submit a counter-affidavit creating such an issue. Although his complaint alleged one overall conspiracy including appellees Stokes and Dillon, a party may not rest upon the mere allegations of his pleadings to create an issue of fact. Keller v. Dravo Corp., 441 F.2d 1239l, 1245 (5th Cir.), *cert. denied*, 404 U.S. 1017 (1971). Fed. R. Civ. P. 56(e) provides in the pertinent part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse

> party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Jones also argues that, in granting partial summary judgment, the district court improperly severed the claims involving the Baskin conspiracy from the claims involving the false arrest conspiracy. Although Jones alleged one overall conspiracy, the court necessarily found that there were two separate conspiracies. The court also found that all claims regarding events occurring before April 5, 1977, were barred by the statute of limitations. Because the last oveart act of the Baskin conspiracy occurred on March 4, 1977, the combination of the court's two findings had the effect of removing all claims regarding the Baskin conspiracy from the case. The record amply supports the district court's findings. The affidavits of defendants Stokes and Dillon eliminated all genuine dispute as to the existence of one overall conspiracy. The only support in the record for Jones' claim that there was a single conspiracy is found in the vague allegations of his supplemental complaint. As noted above, a party may not rest upon the mere allegations of his pleadings. For these reasons, we affirm the district court's grant of partial summary judgment in favor of defendants.

Jones alleges that he was not notified of the date for the hearing on the motion for summary judgment. This allegation is not well taken. The record establishes that Jones was served with the defendants' motion for summary judgment on February 29, 1980. He made a motion to continue the hearing on that motion so that he could

engage in further discovery. The record further indicates that Jones was present and argued his position at the hearing. He offers no support for his claim that the hearing was held without adequate notice. We reject it.

Jones asserts error in the denial of his request for a jury trial. Under Fed. R. Civ. P. 38(b), a party must serve a demand for a jury trial not later than ten days after service of the last pleading directed to any issue triable of right by a jury. Jones did not demand a jury trial until almost a year after the defendants' answer to his original complaint was served. This "demand" was made by service with a "supplemental complaint" which did not add any new issues to the case. The district court was correct in denying the jury trial demand as untimely.

Under Fed. R. Civ. P. 39(b), the district court has discretion to grant a jury trial notwithstanding a party's failure to comply with Rule 38. Jones made a motion for jury trial under Rule 39(b) in March, 1980, almost two years after the action was commenced. Given Jones' unjustified delay in asking for a jury and the nature of the complaints he raises, the district court did not abuse its discretion in denying Jones' request.

Jones asserts error in the denial of his motion for a continuance. The decision to grant or deny a continuance lies within the sound discretion of the district court. Rhodes v. Amarillo Hospital District, 654 F.2d 1148, 1153 (5th Cir. 1981). Jones argues that he needed a continuance because several subpoenas to witnesses had not been returned and because he needed time to subpoena an additional witness. These reasons were not urged before the district court. This fact alone demonstrates that the denial of the continuance cannot be found to be an abuse of discretion.

Jones challenges the sufficiency of the evidence that appellees had probable cause to arrest him for cruelty to a juvenile. The record contains copious evidence indicating that Jones mistreated his daughter. This claim is frivolous.

Jones claims that the district court erred in admitting into evidence statements made by Mrs. Jones and her daughter to the police regarding the beating. We reject this claim. As admissions by party-opponents, the statements are not hearsay. Fed. R. Evid. 801(d)(2). There is ample record evidence that the statements were freely and voluntarily given. Jones also claims that the photograph of his battered daughter was irrelevant. The relevance of the photograph to appellee's assertion of probable cause is obvious. This contention is also frivolous.

Jones alleges error in the admission of Mrs. Jones' medical records because they were not included in the pretrial order. Although the pretrial order generally controls the subsequent course of the action, the trial court has discretion to permit amendment of the order to prevent manifest injustice. Fed. R. Civ. P. 16. The record indicates that Jones actually knew of the document's proposed admission before trial. In addition, Jones was permitted to name twenty-two additional witnesses and six new exhibits in his supplemental pretrial order. It cannot be said that the admission of medical records constituted an abuse of discretion.

Jones challenges several discovery rulings of the district court. Although two witnesses failed to respond to subpoenas, the record reflects no request for an order to compel response. The matter was not brought to the court's attention until after Jones made his closing argument. Jones has made no showing of the content, relevance, or

necessity of the subpoenaed evidence. The court did not err in refusing to compel their testimony. Jones' other challenges of the trial court's discovery rulings are conclusory, unsubstantiated, and without merit.

Jones asserts that the court erred in prohibiting him from cross-examining his own witness. It does not appear from the record that Jones' questioning was restricted in any manner prejudicial to his interests. This claim is frivolous.

Finally, Jones alleges that a defense attorney improperly influenced a witness to commit perjury during a lunch break. This assertion, aside from the fact that it was not raised below, is totally unsupported by the facts.

Each issue raised by Jones' brief, including those too frivolous to discuss, has been considered. All of them are without merit. The district court's judgment is in all respects,

AFFIRMED.

APPENDIX "B"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HURIE JONES, ET AL	CIVIL ACTION
versus	No. 78-1108
JOHN MITCHELL, ET AL	SECTION "G"

OPINION

SEAR, District Judge:

This is a *pro se*[1] civil rights action for damages brought pursuant to 42 U.S.C. § 1983 and § 1985(3) by plaintiffs, Hurie and Joycelyn Jones and their three minor daughters, Mechelle, Comeco, and Kim Jones, against two Jefferson Parish Sheriff's Department detectives, John Mitchell and Howard Wright, arising out of defendants' investigation of physical injuries to Mechelle and their subsequent arrest of Hurie Jones on a charge of cruelty to a juvenile.[2]

On April 5, 1977, at about 6:30 p.m., the Jones family arrived at West Jefferson General Hospital in Marrero, Louisiana to seek emergency medical attention for

---

[1] At various stages of this litigation, three different attorneys were named counsel of record for plaintiffs, but each subsequently withdrew.

[2] Detectives Donald Dillon and Melvin Stokes, Sheriff Alwynn J. Cronvich, Jefferson Parish District Attorney John M. Mamoulides, Assistance District Attorney Clarence E. McManus, Martin Fritcher, George Baskin, Sr., and the Parish of Jefferson were originally also made defendants, but their motions to dismiss or for summary judgment were granted prior to trial.

Mechelle, then ten years old, who had a bloody nose, missing tooth, multiple welts and bruises on her head, back, arms, chest, abdomen, legs, and ankles, and complained of pain in her abdomen and the back of her neck. Mr. Jones told the admitting nurse that Mechelle had fallen out of bed.[3] Dr. Joseph Sabatier examined Mechelle and found she had sustained "significant bruises." She told Dr. Sabatier that her injuries were the result of a beating administered by her father.

That evening, Dr. Sabatier also examined Mrs. Jones, who had a laceration over her left eyebrow, which she told the admitting nurse she sustained when she hit her head on her car door.[4] Dr. Sabatier closed the cut with several stitches.

While completing Mechelle's hospital chart, Dr. Sabatier saw Detective John Mitchell. Due to the "gross inconsistencies" between Mr. Jones' and Mechelle's accounts of the cause of the child's injuries, Dr. Sabatier suggested that Detective Mitchell investigate the incident. Dr. Sabatier considered it "extremely unlikely" that Mechelle's injuries would have resulted from a fall from a bed.

While Mrs. Jones and Mechelle still were in the emergency room, Detective Mitchell viewed the "vivid red welts" on Mechelle, which appeared to him to have been inflicted with a weapon, such as a belt. Mechelle told him her father had beaten her. Another detective took several photographs of Mechelle, which were introduced into evidence and clearly revealed welts on several areas of the

---

[3] See Defendants' Exhibit 11.

[4] *Id.* No. 12.

child's body.[5] Detective Mitchell also spoke with Mrs. Jones, who said her husband struck her, causing the cut over her eye. As both Mrs. Jones and Mechelle appeared to be victims of crimes, Detective Mitchell asked them to accompany him to his department's juvenile bureau for further interviewing. Mrs. Jones assented, and she and Mechelle were discharged from the hospital at about 10:00 p.m.[6]

At the bureau, Detective Mitchell interviewed Mechelle from 10:25 p.m. to 11:35 p.m.[7] Mechelle told him Mr. Jones hit her about twenty times with a belt on her head, back, legs, and nose; squeezed her jaw with his hands, knocking out a tooth, which was already loose; and "stomped in my stomach" and "put his foot in my chest and stomped down on it."[8] Mechelle also told Detective Mitchell that she saw her father hit her mother in the face with his fist earlier that evening while the family was in their car on the way to the hospital. Detective Mitchell wrote down his questions and Mechelle's answers verbatim on a form, which both Mechelle and Mrs. Jones read, appeared to understand, and signed.[9]

From 10:40 p.m. to 11:30 p.m., at about the same time Detective Mitchell interviewed Mechelle, Sergeant Robert Masson interviewed Mrs. Jones in another room at the bureau. She told him Mechelle was brought to the

---

[5] *Id.* Nos. 2-9.

[6] *Id.* Nos. 11 and 12.

[7] *Id.* No. 10

[8] *Id.*

[9] *Id.*

hospital because Mr. Jones hit her about twenty times with a belt, kicked her below the stomach and on her leg "very hard, he had his shoes on," and punched her in the chest, making her gasp for breath. After Mechelle began gasping for breath,

> he kept on hitting her, and telling her to stand up. She was too weak, and then she slid under the bed, he finally picked her up and put her on the bed. He told me to bring her to the hospital because she looked like she was in a stupor.
>
> . . . .
>
> Her mouth was bleeding, and her eyes looked like they were dilated.[10]

Mrs. Jones told Sergeant Masson that Mr. Jones also hit her above the eye with his fist. Sergeant Masson asked if she was afraid of her husband, and she said, "Yes he is always beating me," but she said she did not wish to press charges against him.[11] Sergeant Masson's questions and Mrs. Jones' answers were typed, and Mrs. Jones signed each page.[12]

At the completion of the interviews, Mrs. Jones expressed to Detective Mitchell and the assisting officer, Detective Howard Wright, her fear of being beaten again by her husband, so they drove Mrs. Jones and Mechelle to Mrs. Jones' mother's home. Subsequently, the detectives went to the Joneses' house nearby at 100 Deacon Street, Avondale, Louisiana at about 12:30 a.m. to arrest Mr.

---

[10] *Id.* No. 1.

[11] *Id.*

[12] *Id.*

Jones on a charge of cruelty to a juvenile. Jones was not there. As the detectives' shift ended at 1:00 a.m., they did not return to the residence to arrest Mr. Jones until later that day, April 6, 1977, at about 9:00 p.m.

At that time, Mr. Jones answered the detectives' knock, they identified themselves, advised him of the charge against him and of his Miranda rights, and arrested him without a warrant, but with probable cause to believe he had committed the crime of cruelty to a juvenile, based upon information provided by Dr. Sabatier, Mechelle, and Mrs. Jones. Mr. Jones subsequently was booked and jailed overnight. On the day set for Mr. Jones' trial on the charge, his attorney struck a bargain with the district attorney to continue the case without date, provided that no more complaints were lodged against Mr. Jones, because a felony conviction would hinder him in becoming licensed to practice law in Louisiana.

Plaintiffs attempted to adduce evidence at trial that defendants did not have probable cause to arrest Mr. Jones, but were motivated by a conspiracy to prevent him from becoming a licensed lawyer in Louisiana; however, there was not a shred of evidence supporting any such theory of conspiracy.

The only testimony contrary to that of Detectives Mitchell and Wright and Dr. Sabatier was that of Mrs. Jones. According to her testimony, she and Mechelle were alone in the master bedroom at their house when she discovered pencils under the telephone receiver, which Mechelle admitted placing there to prevent her schoolteacher from phoning about her bad grades. Mechelle became hysterical and ran around the room screaming. Mr. Jones came into the room to see why Mechelle was scream-

ing, found her under the bed, and pulled her out. Mechelle was having trouble breathing, so Mr. and Mrs. Jones rushed her to the hospital. Although Mrs. Jones did not see Mechelle fall and hurt her chest, she assumed Mechelle fell over a toilet bowl. She testified that she examined Mechelle, but did not see a bloody nose, missing tooth, welts, or other form of physical injury. Mrs. Jones admitted receiving stitches at the hospital to mend a cut over her left eye that occurred after she left home, but could not explain how she got the cut, and did not remember telling the admitting nurse that she injured her head on her car door.

According to Mrs. Jones' testimony, Detective Mitchell told her she had to go with him to the police station to discuss Mechelle's injuries. She testified that she asked to wait until Mr. Jones returned to the hospital, but Detective Mitchell insisted they leave right away. Mrs. Jones testified further that at the juvenile bureau, Detective Mitchell refused her request to make a phone call.

While admitting her signature appears on the transcriptions of the interviews the detectives had with her and Mechelle, Mrs. Jones testified that she did not read them, and any statement she gave was involuntary, because the police officer questioning her threatened to take her children away and give them to the welfare department if she refused to answer. She testified that she felt isolated, helpless, and fearful for Mechelle's safety at the police station, and that she considered herself under arrest. At the conclusion of the questioning, she and Mechelle were driven to her mother's house upon the suggestion of Detective Mitchell. Following the events of April 5 and 6, 1977, and again in the spring of 1980 during the course of this litigation, Mrs. Jones sought psychological treatment for emotional stress.

Mrs. Jones' testimony is not credible. The testimony of Dr. Sabatier and Detectives Mitchell and Wright, as well as the photographs taken of Mechelle after she was injured, overwhelmingly discredit Mrs. Jones' testimony that she did not see any of Mechelle's injuries and that Mechelle was having trouble breathing because she fell over a toilet bowl. Furthermore, it is impossible to believe that Mrs. Jones considered herself under arrest, was fearful of police officers, who clearly were attempting to aid her and her daughter as possible crime victims, and that she signed false statements without reading them. Mrs. Jones is an educated woman, having obtained a bachelor's and master's degree in education, and she taught school for thirteen years. While she probably was suffering emotional stress during the interviews with police, it was not caused by fear of the police, but of her husband. Her demeanor at trial suggested that she was still under streee, as she appeared abnormally nervous and answered questions haltingly. Neither Mr. Jones nor Mechelle took the stand to corroborate Mrs. Jones testimony, and it will be accorded no weight whatsoever.

Title 42 U.S.C. § 1983 provides a remedy in damages against persons acting under color of state law who deprive citizens of a constitutional right. 42 U.S.C. § 1983; *Rodriguez v. Jones*, 473 F.2d 599 (5th Cir. 1973), *cert. denied*, 412 U.S. 953, 93 S.Ct. 3023 (1973). In this case, plaintiffs allege that defendants, while acting under color of authority of the State of Louisiana, as members of the Sheriff's Department of Jefferson Parish, deprived plaintiffs of their liberty without due process of law, essentially a claim of false arrest. Where the defense of probable cause is available to negate a charge of false arrest, it is also a defense under a section 1983 claim based on an alleged false arrest. *Rodriguez, supra*, at 604. *Accord, Hunter v.*

Clardy, 558 F.2d 290 (5th Cir. 1977).

An "arrest" is

> the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him.

La. Code Crim. Proc. art. 201 (West 1967). An arrest occurs only when the facts and circumstances indicate that the police officer has formed an intent to restrain the liberty of an accused for an extended period of time. *State v. Daigre*, 364 So.2d 902 (La. 1978).

The facts and circumstances surrounding defendants' questioning of Mrs. Jones and Mechelle on the night of April 5, 1977 indicate that neither was under arrest. They were not criminal suspects, but victims of possible crimes. Defendants formed no intent to restrain their liberty for an extended period of time, as Mrs. Jones and Mechelle voluntarily agreed to give statements to aid defendants in their investigation of Mechelle's beating.[13]

---

[13] At trial, Mr. Jones asserted that defendants had admitted arresting Mrs. Jones and Mechelle by virtue of their failure to answer plaintiffs' request for admission of facts, as required by FRCP 36(a), which provides, in pertinent part:

> The matter is admitted unless, within 30 days after service of the request, ... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.

In a colloquy with the court, defendants' counsel indicated that they might not have been served with the identical request alluded to by

There is no question that Mr. Jones was arrested. Under the law of the State of Louisiana, a peace officer has the right to arrest a person without a warrant whenever the officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer. L. Code Crim. Proc. art. 213 (West Supp. 1980). Cruelty to a juvenile is an offense under the law of Louisiana, and is defined as

> the intentional or criminally negligent mistreatment or neglect, by anyone over the age of seventeen, of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child.

La. Rev. Stat. Ann. 14:93 (West 1974). Based upon the information provided by Dr. Sabatier, Mrs. Jones, and Mechelle at the hospital, and by the latter two at the juvenile bureau, defendants had reasonable or probable cause to believe Mr. Jones had committed the crime of cruelty to a juvenile. As defendants effected the arrest of Mr. Jones with probable cause and in accordance with state law, they

---

(Footnote 13 continued)
plaintiffs. Even if defendants were served with the request, and failed to respond, that failure would not, in this case, require that the matter be deemed admitted under Rule 36(a). As the Fifth Circuit held in *Pickens v. Equitable Life Assur. Soc. of U.S.*, 413 F.2d 1390 (5th Cir. 1969):

> Rule 36 is not a discovery device, and its proper use is as a means of avoiding the necessity of proving issues which the requesting party will doubtless be able to prove. [Citations omitted]. Accordingly, requests for admissions as to central facts in dispute are beyond the proper scope of the rule. Such requests have consistently been held improper.

Id. at 1393. The issue of whether Mrs. Jones and Mechelle were arrested is central to a determination of this case. Thus, defendants' failure to reply to the request does not fall within the ambit of Rule 36(a) and constitutes no admission of arrest. *Pickens, supra.*

are absolutely immune from a section 1983 claim of false arrest. *Hunter v. Clardy, supra.*

Turning to plaintiffs' conspiracy claim, 42 U.S.C. § 1985(3) provides a remedy in damages against those conspiring to deprive persons of their right to be free from racial discrimination and the right to the equal protection of the laws, or equal privileges and immunities under the law. It does not reach conspiracies to deny one of due process. *Lew v. Brautigam,* 227 F.2d 124 (5th Cir. 1955). Plaintiffs introduced no testimony whatsoever lending credence to their section 1985(3) conspiracy claim, which is clearly meritless.

Accordingly, plaintiffs' claim is dismissed at their cost.

Based upon the evidence presented at trial, the arguments of plaintiffs proceeding *por se* and of defense counsel, and the law, I now enter the following findings of fact and conclusions of law:

FINDINGS OF FACT

1.

On April 5, 1977, plaintiffs, Hurie and Joycelyn Jones, took their ten-year-old daughter, Mechelle, to West Jefferson General Hospital in Marrero, Louisiana at about 6:30 p.m. Mechelle had various injuries including a bloody nose, missing tooth, welts and bruises all over her body, and complained of pain in her abdomen and neck. Mr. Jones reported that she had fallen out of bed.

2.

Mechelle told the examining physician, Dr. Joseph Sabatier, that her father had beaten her, and as a fall from a bed would not cause such injuries, Dr. Sabatier suggested that defendant, Detective John Mitchell of the Jefferson Parish Sheriff's Department, investigate the incident.

3.

At the hospital, Detective Mitchell viewed Mechelle's injuries, and she told him her father beat her. Photographs taken by another detective clearly reveal red welts on several areas of Mechelle's body.

4.

That evening, Dr. Sabatier also treated Mrs. Jones for a cut over her left eye, which she reported to the admitting nurse was caused by striking her head on her car door; however, Mrs. Jones told Detective Mitchell at the hospital that her husband had struck her with his fist, causing the cut. Mrs. Jones received several stitches.

5.

Mrs. Jones and Mechelle voluntarily accompanied Detective Mitchell to the juvenile bureau to answer more questions in aid of his investigation of possible crimes committed by Mr. Jones.

6.

Detective Mitchell interviewed Mechelle for about an

hour in which she detailed the beating administered by her father and said she also saw him hit her mother that evening. Detective Mitchell wrote down her answers verbatim on a form that both Mechelle and Mrs. Jones read, appeared to understand, and signed.

7.

At the same time in another room, Sergeant Robert Masson interviewed Mrs. Jones, and she also detailed Mechelle's beating, as well as her own. She expressed fear of Mr. Jones, but declined to press charges. Mrs. Jones signed a typewritten copy of the interview.

8.

Detectives Mitchell and Howard Wright, also a defendant, drove Mrs. Jones and Mechelle to Mrs. Jones' mother's house, because Mrs. Jones was afraid to return home. Subsequently, the detectives went to the Joneses' house to arrest Mr. Jones, but he was not at home.

9.

Defendants returned and arrested Mr. Jones on April 6, 1977 at about 9:00 p.m. after knocking on his door, identifying themselves, and advising him of the charge against him and of his Miranda rights. While defendants did not have an arrest warrant, based upon Dr. Sabatier's examination and the information provided by Mechelle and Mrs. Jones, both at the hospital and at the juvenile bureau, they had probable cause to believe Mr. Jones had committed the crime of cruelty to a juvenile. They were not motivated by any conspiracy to establish a felony record on Mr. Jones to prevent him from becoming a licensed Louisiana lawyer.

10.

Mrs. Jones' testimony that Mechelle probably hurt her chest falling over a toilet bowl, that no injuries were visible on Mechelle, and that she did not know how her own eye was cut, is not credible. Likewise, her testimony that Detective Mitchell arrested her and Mechelle and would not allow her to make a phone call, and that her statements to Sergeant Robert Masson were involuntary responses to his threat to place her children with the welfare department, are not believable. The circumstances suggest that any emotional stress she was under during her interview at the bureau was caused by fear of her husband, not the police. Her testimony will be accorded no weight.

CONCLUSIONS OF LAW

1.

This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331, and venue in the Eastern District of Louisiana is proper.

2.

Title 42 U.S.C. § 1983 provides a remedy in damages against persons acting under color of state law who, without due process of law, deprive citizens of their constitutional right of liberty. 42 U.S.C. § 1983; *Rodriguez v. Jones*, 473 F.2d 599 (5th Cir. 1973), *cert. denied*, 412 U.S. 953, 93 S.Ct. 3023 (1973).

3.

Where the defense of probable cause is available to negate a charge of false arrest, it is also a defense under a section 1983 claim based on an alleged false arrest. *Rodriguez v. Jones, supra,* at 604. *Accord, Hunter v. Clardy,* 558 F.2d 290 (5th Cir. 1977).

4.

An "arrest" occurs only when the facts and circumstances indicate that the police officer has formed an intent to restrain the liberty of an accused for an extended period of time. *State v. Daigre,* 364 So.2d 902 (La. 1978). *See* La. Code Crim. Proc. Art. 201 (West 1967). The facts and circumstances surrounding the questioning of Mrs. Jones and Mechelle indicate they voluntarily accompanied Detective Mitchell to the juvenile bureau and answered questions there as victims of possible crimes. Defendants had no intention to restrain their liberty; therefore, they were not arrested.

5.

Based upon the information provided by Dr. Sabatier, Mrs. Jones and Mechelle, defendants had probable cause to arrest Mr. Jones on a charge of cruelty to a juvenile, an offense in Louisiana, La. Rev. Stat. Ann. 14:93 (West 1974); therefore, the warrantless arrest was proper under Louisiana law, La. Code Crim. Proc. Art. 213 (West Supp. 1980), and defendants are absolutely immune from a section 1983 claim of false arrest. *Hunter v. Clardy, supra.*

6.

Title 42 U.S.C. § 1985(3) provides a remedy in damages against those conspiring to deprive persons of their right to be free from racial discrimination and the right to the equal protection of the laws, or equal privileges and immunities under the law. It does not reach conspiracies to deny one of due process. *Lew v. Brautigam*, 227 F.2d 124 (5th Cir. 1955). There was no evidence to support a section 1985(3) conspiracy claim, which is meritless.

7.

As plaintiffs failed to prove prima facie claims under both 42 U.S.C. § 1983 and § 1985(3), their suit is dismissed.

Let judgment be entered accordingly.

New Orleans, Louisiana, this 30 day of July, 1980.

/S/MOREY L. SEAR
MOREY L. SEAR
UNITED STATES DISTRICT JUDGE

APPENDIX "C"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 80-3734
Summary Calendar

HURIE JONES, ET AL.,

Plaintiffs-Appellants,

versus

JOHN MITCHELL, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion September 10, 5 Cir., 1982, __F.2d__).

(October 18, 1982)

Before CLARK, Chief Judge, POLITZ and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member

of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

_____

CHIEF JUDGE

APPENDIX "D"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 80-3734

HURIE JONES, ET AL

Plaintiffs-Appellants

VS.

JOHN MITCHELL, ET AL

Defendants-Appellees

AND

NO. 81-3601

JOYCELYN M. JONES, ET AL

Plaintiffs-Appellants

VS.

JEFFERSON PARISH SCHOOL BOARD

Defendant-Appellee

AND

NO. 81-3204

HURIE JONES

Plaintiff-Appellant

VS.

ORLEANS PARISH SCHOOL BOARD

Defendant-Appellee

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

PLEASE TAKE NOTICE THAT Appellants Joycelyn M. Jones, Hurie Jones, Mechelle D. Jones, Comeco C. Jones and Kim B. Jones are taking this consolidated appeal from the entire or complete judgments rendered and entered into the records of these cases against appellants by this court on October 18, 1982, October 28, 1982 and November 16, 1982.

This appeal, civil action No. 80-3734, is taken pursuant to Rules 10, 11, 12, 15, 28, 29 and 38 of the Supreme Court of the United States.

Further, Appellants are taking this appeal pursuant to the following Constitutional and statutory provisions: 28 U.S.C.A. Section 1331, 28 U.S.C.A. Section 1343, 42 U.S.C.A. Sections 1981, 1983, 1985 and the First, Fourth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

Finally the pendent jurisdiction of this court is invoked pursuant to Louisiana Civil Code Articles 2315, 2315.1, 2317, 2320 and 2324.

This appeal, in civil action No. 81-3601, is taken pursuant to Rules 10, 11, 12, 15, 28, 29 and 38 of the Supreme Court of the United States.

Further, appellants are taking this appeal pursuant to the following constitutional and statutory provisions; particularily the First, Fifth, and Fourteenth Amendments, 28 U.S.C.A. Section 1331, 28 U.S.C.A. Section 1343, 42 U.S.C.A. Section 1981, 42 U.S.C.A. Section 1983, 42 U.S.C.A. Section 1985, 28 U.S.C.A. Section 1915, Rule 24 (a) of the Federal Rule of Appellate Procedure, Rule 2.4 of the Local Federal Rules of Civil Procedure, Rule 8(a), 57

and 65 of the Federal Rules of Civil Procedure and 28 U.S.C.A. Section 2201.

Finally, pendent jurisdiction of this court is invoked, for the purpose of redressing appellants state law claims, pursuant to Louisiana Civil Code Articles 2315, 2317, 2320, 2324, R.S. 17:441, R.S. 17:443, R.S. 17:281, R.S. 17:391.5, R.S. 17:24.3c(2) through 12.

This appeal, civil action No. 81-3204, is taken pursuant to Rules 10, 11, 12, 15, 28, 29 and 38 of the Supreme Court of the United States.

Further, appellant is taking this appeal pursuant to the following constitutional and statutory provisions: specifically the First (1st), Fifth (5th) and Fourteenth (14th) Amendments to the United States Constitution and the applicable statutory provisions thereto; specifically 28 U.S.C.A. Section 1331, 28 U.S.C.A. Section 1343, 42 U.S.C.A. Section 1983, 42 U.S.C.A. Section 1985, 28 U.S.C.A. Section 2201 and 2202, 42 U.S.C.A. Section 2000 3-5 (f). Appellant's civil action is further authorized and instituted pursuant to Section 706 (F) (1) and (3) of Title VII if the civil rights act of 1864, as amended by the Equal Employment Opportunity Act of 1972, Public law No. 92-261, hereafter referred to as Title VII, 42 U.S.C.A. Section 1981, Rules 8(a) and 57 of the Federal Rules of Civil Procedure; accordingly, this court has jurisdiction over this controversy pursuant to the foregoing provisions.

Finally, pendent jurisdiction of this court is sought or invoked pursuant to R.S. 17:461, R.S. 17:462 and Louisiana Civil Code Articles 21, 1761, 1765, 1779, 1901, 1926, 1930, 1934(2) and (3), 2315, 2317, 2320, 2324, 3538 and 3544.

Appellants are appealing jointly or consolidated the two above described cases, styled as civil action No. 80-3734; Hurie Jones, ET AL VS. John Mitchell, ET AL and civil action No. 81-3601; Joycelyn M. Jones, ET AL VS. Jefferson Parish School Board; because both cases grew out of and evolved as an integral part of one joint and continuous covert conspiracy in which appellees acted jointly under color and pretense of state law, to deprive plaintiffs, appellants herein, of their rights, privileges immunities and entitlements as guaranteed by the United States Constitution by first denying appellants of equal protection of the laws and then by obstructing justice, in complicity with named third parties, and denying appellants of due process of laws in an attempt to conceal appellees, and their joint third party co-conspirators complicity in the first action, styled as Hurie Jones, ET AL VS. John Mitchell, ET AL, Civil Action No. 80-3734.

Further, appellants are appealing jointly or consolidated, in the same jurisdictional statement, the above described cases styled as Joycelyn M. Jones, ET AL VS. Jefferson Parish School Board, civil action No. 81-3601 and Hurie Jones VS. Orleans Parish School Board, Civil Action No. 81-3204; because the ultimate issues, arising under the Constitution of the United States and specific state statutory laws are identical.

/S/HURIE JONES
Hurie Jones

/S/JOYCELYN M. JONES
Joycelyn M. Jones
2103 La Quinta Via
Harvey, Louisiana 70058
(504) 367-9621
November 23, 1982

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing notice of appeal has been served upon opposing counsels by placing a copy of the same in the U.S. Mail, postage pre-paid this 23rd day of November 1982.

/S/HURIE JONES
Hurie Jones

/S/JOYCELYN M. JONES
Joycelyn M. Jones
2103 La Qunita Via
Harvey, Louisiana 70058
(504) 367-9621